IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

LETTERS PATENT APPEAL NO. 221 OF 2001

M/s. Anita Medical Systems Pvt. Ltd. ... Appellant

Vs.

Dr. Gopal Mahadeo Dhadphale and Ors. Respondents

Mr. R.V. Govilkar for Appellant.

Mr. S.M. Dixit with Mr. V.S. Kapse for Respondents.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : AUGUST 25, 2004

P.C. :

1. This appeal is preferred against the order passed in Writ Petition No. 2255 of 2001. Though the petitioner in the said petition has invoked both Articles 226 and 227 of the Constitution for all purposes, it was a challenge to the order of the appellate Bench of the Small Causes Courts in Appeal No. 34 of 1998.

. A Division Bench of this Court in the case of Hiralal Bhagirath Marwadi Vs. Vishwanath 1990 Mh.L.J. 259 as also another Division Bench of this Court in the case of Madhukar Mohite Vs.

Balkrishna in L.P.A. No. 1268 of 1997 arising from W.P. No. 6011 of 1976 decided on 6th and 12th August, 1999 after considering various judgments, have laid down some tests to find out whether the petition filed is under article 227 and or article 226. In Madhukar Mohite (supra) the matters arose from the judgement under the provisions of the Bombay Rent Act, 1947. After considering facts and decisions, the learned Division Bench came to the conclusion that such a petition would be invoking jurisdiction under Article 227 of the Constitution of India. No doubt it was further set out that the tests laid down were illustrative and not exhaustive. It is true that in the instant case, the learned Single Judge has not decided whether he has invoked jurisdiction under Article 226 or 227. For all purposes considering the parties, the challenges and the relief sought it was to invoke the supervisory jurisdiction under Article 227. In the light of that L.P.A. would not be maintainable. Hence, L.P.A. dismissed.

2. The learned counsel for the appellant seeks stay to the operation of the order. Considering the fact that the appellants are in possession, it

will be in the fitness of things that they are not dispossessed at least for the period of eight weeks on the petitioner's filing usual undertaking within two weeks from today. If the undertaking is not filed within two weeks, it will be open to the respondents to execute decree in their favour.

(F.I. REBELLO,J.)

(ANOOP V. MOHTA,J.)